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SUBJECT: ITALY JUDICIAL REFORM AND IPR, AN INITIAL
ASSESSMENT

REF: A. STATE 207519

[B](#). ROME 3818

[C](#). ROME 1569

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[1](#)1. (SBU) Summary: GOI officials, including the Minister of Justice, have denied that the "ex-Cirielli" legislation to reform Italy's criminal justice system will have a major impact on IPR enforcement. A recently adopted amendment limits the bill's impact on current cases and reduces the likelihood that changes in the statute of limitations would result in a massive dismissal of piracy cases, as originally alleged by the Recording Industry Association of America. We expect Parliament to approve the bill by the end of the year but will continue to monitor its impact on IPR cases. End Summary.

Background

[1](#)2. (U) The "ex-Cirielli" legislation (named for its original sponsor in the Chamber of Deputies, National Alliance Parliament member Edmondo Cirielli) represents an attempt by Prime Minister Silvio Berlusconi's administration to reform Italy's slow criminal justice system. The law primarily:

--Increases penalties for repeat offender (according to the bill's sponsors, 60-70 percent of crimes in Italy are committed by repeat offenders);

--Stiffens penalties for mafia-related crimes;

--Reduces judicial discretion in extending trials by restricting the statute of limitations (see below);
and

--Allows the elderly (70 and over) and pregnant women to serve criminal sentences at home.

[1](#)3. (SBU) While promoted by the GOI as a needed fix for Italy's glacial justice system, the bill had been trashed by the opposition because, not for the first time, Berlusconi's associates would have benefited from a parliamentary change in the criminal code. For a time, the bill went by the nickname the "Save Previti Law" because, in its original form, it would have resulted in the dismissal of the conviction of Forza Italia MP Cesare Previti. Previti, who previously served as Berlusconi's lawyer, was convicted of bribing a judge in the early 1990s and his case is still in the appeals process.

Amendment Excludes Most Current Cases

[1](#)4. (SBU) In response to these concerns and the prospect of a mass amnesty for current defendants, the Union of Christian and Center Democrats (UDC), a member of the governing center-right coalition, introduced an amendment to exempt most cases already under trial or in the appeals process from the new statute of limitations. The amendment has made the bill less controversial. "Ex-Cirielli" passed the Chamber of Deputies November 9 and is now awaiting a final vote by the Italian Senate (which had already passed an earlier version).

Massive Dismissal of Current IPR Cases Unlikely

[1](#)5. (SBU) Even with the UDC amendment, copyright industry groups--most importantly the Recording Industry Association of America (RIAA) and its

Italian sister-organization, the Federazione Industria Musicale Italiana (FIMI)--are alarmed by the proposed reduction of the statute of limitations. If the bill becomes law as expected, the statute of limitations in a case will not be able to exceed the maximum sentence for the crime (i.e. the trial and appeals for a crime punishable by up to 10 years would need to be completed within 10 years). Of more importance to the copyright industries, however, is the minimum statute of limitations, which applies to all "minor" crimes, such as IPR theft, where the maximum sentence is 3-4 years. Ex-Cirielli would lower the minimum statute of limitation from seven-and-a-half to six years.

16. (SBU) Originally RIAA/FIMI predicted that the bill would result in a massive dismissal of 90 percent of music piracy cases currently before the court (382 of the 471 cases the music industry was pursuing in Italy as of 2004). The UDC amendment significantly reduces the number of current cases that will be dismissed when ex-Cirielli enters into force. The GOI claims that, with the UDC amendment, any impact on IPR would be minor (see paragraph 8 below).

But Future Prosecutions May Dip

17. (SBU) Italy-based copyright associations are now emphasizing the legislation's potential negative impact on future IPR prosecutions. According to a joint statement released by FIMI, the Business Software Alliance (BSA), and FAPAV (an Italian movie industry group that represents American studios here), the new six-year statute of limitations for minor crimes would discourage prosecutors from pursuing IPR cases. The average IPR case currently takes six-to-nine years to complete, according to the groups, and even under the current seven-and-a-half-year limit the statute of limitations on many IPR cases expires before the final appeal is finished. The associations argue that the six year statute of limitations would increase the likelihood that defense attorneys could simply run out the clock. Prosecutors, knowing the difficulties of completing an IPR case within six years, may simply not bother to bring charges.

GOI: Impact on IPR Minimal

18. (SBU) GOI officials have generally denied industry claims that ex-Cirielli will severely impact IPR enforcement. Ambassador Spogli raised this issue in a November 15 meeting with Justice Minister Roberto Castelli (ref B). Castelli said he doubted the legislation would have a serious effect on IPR. He said the ex-Cirielli bill would only affect pending criminal cases with a possible sentence greater than four years. IPR violations, he noted, only carry a maximum sentence of four years. (Comment: It is true that the greatest impact of "ex-Cirielli" will be on more serious criminal cases. We believe Castelli's skepticism that the law will harm IPR enforcement is because there will be relatively little change in the minimum statute of limitations, from seven-and-a-half to six years. End Comment.) In fact, Castelli said only seven percent of all pending criminal cases would be affected by the ex-Cirielli legislation. Castelli promised to perform a study on the possible impact of the legislation on IPR cases and report back to the Ambassador. Embassy will report findings septel.

19. (SBU) Poloff met November 22 with Forza Italia Deputy Gabriella Carlucci and mentioned the concerns of U.S. IP industries. She said the UDC amendment should address most of their worries. She predicted the legislation would pass the Senate the week of November 28 without any changes. If the industries still have a problem with the modified ex-Cirielli bill, she suggested introducing an "Ordine del Giorno" (somewhat analogous to a unanimous consent agreement) expressing the will of the Chamber to look into fixing the problem at some other date.

10. (SBU) Separately, Econoffs raised this issue with Massimo Leggeri, MFA Deputy Director General for Multilateral Economic Affairs and Ludovica Agro, Director of the Italian Patent and Trademark Office. While saying he was not familiar with the details of ex-Cirielli, Leggeri reiterated Castelli's prediction that the legislation will not have much impact on IPR. Leggeri stated that Italy would not pass a law that violated Italy's commitments under TRIPS. Agro, meanwhile, stated that she shares the industry concerns and would further research the effect of the ex-Cirielli reforms on IPR and possible TRIPS implications.

Comment: The Sky Is Not Falling

11. (SBU) Comment: The Embassy will continue to press Castelli's office for its promised report of the IPR ramifications of these reforms. We also will deliver ref A points at as many opportunities as we can. With the UDC amendment, however, it appears that RIAA's initial claim that 90 percent of current IPR cases would be thrown out of court is no longer valid.

12. (SBU) Comment continued. The Embassy shares the industry's concerns that, in the future, ex-Cirielli may dampen prosecutor's enthusiasm to invest resources in IPR cases. At this point, however, this argument is hypothetical and unlikely to sway GOI decision makers. A senior Senate staffer tells us that toughening sentences for repeat offenders will likely lead to better IPR enforcement (an argument BSA, FIMI, and FAPAV strongly reject). Another contact, a senior officer in the Ministry of Interior's anti-mafia task force, likewise says the anti-mafia provisions in the reforms (much commercial-scale piracy is controlled by the Naples-based Camorra organization) will similarly allow Italian prosecutors to raise the stakes against pirates and counterfeiters.

Justice Delayed Is Justice Denied

13. (SBU) Comment continued: USG approaches on ex-Cirielli should remain limited to the narrow issues of IPR and foreign bribery cases, rather than opposition to the entire legislation. Berlusconi's alleged personal interests aside, Italy has good reason to want to reform its dysfunctional criminal justice system. Criminal trials that stretch beyond two decades (not an uncommon occurrence here) undermine the rule of law. As industry groups readily admit, the system as it stands does not result in significant convictions or punishment for IPR crimes in Italy. The key factor, regardless of these reforms, is the willingness of Italian judges to hand down guilty sentences and meaningful prison time for counterfeiting and piracy. Because of this, the Embassy continues to focus its IPR outreach efforts on Italian judges (ref C).

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